

Petic - PM

FROM Col. Neil A. Smart, Rock Island Corps of Engineers		CONTROL NO. RGAD-87-138	
SUBJECT AND DATE 5/18/87		DATE REC'D 5/21/87	
RE: Their ltr to Mr. Bruce Carey of Alter Co dated 4/6/87, concerning disposal of shredded car interiors in wetland areas adjacent to the Mississippi River....		DUE DATE 6/4/87	
REFERRED TO XXX CNSL	(2) cc: PLAG	cc: RA/DRA	(4)
DATE	REPLY SENT TO		DATE RELEASED
REMARKS RGAD:AIT:ait		ACKNOWLEDGED - DATE <input type="checkbox"/> NO ANSWER NEEDED <input type="checkbox"/> (Explain in remarks)	


Handwritten notes:
- "has original" (near top right)
- "RV" (near center)
- "done" (near center)
- "appropriate" (near center)

EPA Form 5180-1 (6-72)
REPLACES FWPCA FORM 72 AND
HEW-73 WHICH MAY NOT BE USED.

(Remove this copy only, do not separate remainder.)

MAIL CONTROL SCHEDULE

RECEIVED
MAY 26 1987
EIS/404 BRANCH

30299088	54
	
Superfund	
00-00	5/18/87



CERTIFIED MAIL
RETURN RECEIPT REQUESTED
DEPARTMENT OF THE ARMY

ROCK ISLAND DISTRICT, CORPS OF ENGINEERS
CLOCK TOWER BUILDING
ROCK ISLAND, ILLINOIS 61201

cc ltr: RA/DRA

cc direct to:

FLMG ✓

CONTROL PKG: CNSL
#138

REPLY TO
ATTENTION OF:

Operations Division

May 18, 1987

Mr. John Franke, III
Regional Administrator
U.S. Environmental Protection Agency
Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

Dear Mr. Franke:

Reference is made to our letter to Mr. Bruce Carey of Alter Company dated April 6, 1987, concerning disposal of shredded car interiors in wetland areas adjacent to the Mississippi River in Sections 4 and 8, Township 77 North, Range 3 East, Scott County, Iowa. Reference is also made to letters concerning this matter which were sent to you and Ms. Katherine Biggs and dated May 5, 1986 and June 20, 1986, respectively. Finally, your attention is directed to the enclosed letter from Mr. Angus Macbeth dated April 23, 1987. Mr. Macbeth is an attorney for Alter Company.

This office is concerned not only over the disposal activity performed by Alter Company, but also subsequent violations of the Clean Water Act that are occurring in the same wetland complex and that we feel are due in part to the lack of enforcement at the Alter sites.

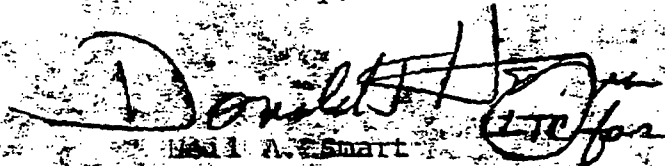
This office requests the U.S. Environmental Protection Agency review the information provided and inform us if the appropriate authorization under Section 402 of the Clean Water Act has been issued; and, if so, provide us with copies of the authorization. Your comments on the other issues raised in the April 23, 1987 letter from Mr. Macbeth are also requested.

If authorization has not been granted, we are requesting issuance of an administrative order or the filing of a complaint under Section 309 to control the discharges by Alter company in wetlands adjacent to the Mississippi River. This request is in accordance with the procedures set forth under Item B.2. of the Memorandum of Agreement on Solid Waste Management dated January 23, 1986, between our agencies.



Due to the length of time involved since our original request to you for a Section 309 order and the ongoing work by Alter Company, it appears that immediate action should be taken by your agency.

Sincerely,



Donald H. Smart
Colonel, Corps of Engineers
District Engineer

Enclosure

Copies Furnished:

Angus Macbeth, Esquire
Sidley and Austin
1722 Eye Street, Northwest
Washington, D.C. 20006

Mr. Bruce Carey
Alter Company
2333 Rockingham Road
Box 3708
Davenport, Iowa 52808

Mr. Larry J. Wilson, Director
Iowa Department of Natural Resources
Henry A. Wallace Building
900 East Grand Avenue
Des Moines, Iowa 50319-0034

Mr. Richard C. Nelson
Field Supervisor
U.S. Department of the Interior
Fish and Wildlife Service
Rock Island Field Office (ES)
1830 Second Avenue
Rock Island, Illinois 61201

SIDLEY & AUSTIN

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

1722 EYE STREET, N.W.
WASHINGTON, D.C. 20006
TELEPHONE 202: 429-4000
TELEX 89-463

ONE FIRST NATIONAL PLAZA
CHICAGO, ILLINOIS 60603
312: 853-7000 TELEX 26-4384

2049 CENTURY PARK EAST
LOS ANGELES, CALIFORNIA 90067
213: 553-8100 TELEX 16-1391

520 MADISON AVENUE
NEW YORK, NEW YORK 10022
212: 418-2600 TELEX 67-1696

15 KING STREET
LONDON, E.C. 2A, ENGLAND
441: 331-0881 TELEX 334120

8 SHENTON WAY
SINGAPORE 0405
65: 224-5000 TELEX 26734

P.O. BOX 6750
DUBAI, DUBAI, U.A.E.
0744-23384 TELEX 47286

P.O. BOX 6891
ABU DHABI, U.A.E.
0332-32267 TELEX 63603

P.O. BOX 6666
STRAIT, BANDU ABABA
011-444-4444 TELEX 484947

SIDLEY AUSTIN & NORTON
1000 N. MICHIGAN STREET SUITE 2000
ANN ARBOR, MI 48106
313: 763-4000 TELEX 21014

April 23, 1987

Colonel Neil A. Smart, Corps of Engineers
District Engineer
Department of the Army
Rock Island District, Corps of Engineers
Clock Tower Building -- P.O. Box 2004
Rock Island, Illinois 61294-2004

Attention: Operations Division

Dear Col. Smart:

I am writing in response to your letter of April 5, 1987 to the Alter Co. addressing Alter's disposal of auto shredder waste in Sections 4 and 8, Township 77 North, Range 3 East, Scott County, Iowa. The Section 4 site is known to Alter as the Credit Island site and the Section 8 site as the Highway 22 site and I will refer to them by those terms in this letter for ease in identification. The Highway 22 site is presently owned by the Highway 22 Co. and I am sending this letter on behalf of both Alter and the Highway 22 Co.

I disagree with the conclusion which you suggest in the letter that Alter is violating the Clean Water Act by its disposal of auto shredder waste at the Highway 22 site and the Credit Island site. Both these sites have a history of dealings with a variety of federal and state regulatory agencies and in order to have a full understanding of the present situation it is necessary to set that history out at some length. I shall address Highway 22 first since its history is somewhat simpler than that of Credit Island.

Highway 22 site. First, the Highway 22 site is used for the disposal of auto shredder refuse rather than the placing of dredge or fill material. In these circumstances, if any permit is required for Alter's activities, it is our understanding that it would be a discharge permit to be obtained from the Iowa Department of Natural Resources rather than a Section 404 permit from the Corps of Engineers under the federal Clean Water Act.

Col. Neil A. Smart
April 23, 1987
Page 2

Equally importantly, our prior dealings with the federal government and the Iowa Department indicate that such a permit is not necessary. I enclose herewith as attachment 1 a letter of September 18, 1984, from Thomas M. Groutage of United States Department of the Interior's Fish and Wildlife Service to Mr. David N. Whiting of the Iowa Department of Water, Air and Waste Management, the predecessor to the Department of Natural Resources. That letter reflects an inspection of the Highway 22 site which Mr. Groutage made with Mr. Whiting and representatives of Alter on September 6, 1984. In that letter Mr. Groutage stated that "Aerial photos taken in 1977 and 1979 of the site indicate that the area was primarily agricultural prior to its use as a disposal site. However, some of the waste material is now encroaching on adjacent wetlands, and any further expansion could result in loss of wetland habitat."

Mr. Whiting of the Iowa Department of Water, Air and Waste Management, followed up the site inspection and this letter from the Fish and Wildlife Service with a letter of October 4, 1984, to Alter which is enclosed as attachment 2. In that letter, Mr. Whiting set out the conclusions of the Fish and Wildlife Service and then stated: "It is further recommended that Alter Metal Company include a statement of intent to dispose of its more solid waste to the southeast of the present disposal area. This will ensure the disposal area will not encroach upon wetlands in the future." Since 1984 Alter has not disposed of solid waste to the southeast of the disposal area.

Given the position of the Fish and Wildlife Service and the position of the Iowa Department which has regulatory authority over discharges into the waters in Iowa, we believe Alter has acted properly at the Highway 22 site and is in compliance with applicable law.

In considering the site, you should also be aware that the Highway 22 Company, Alter's successor at the Highway 22 site, recently became aware that third parties were dumping waste material at the Highway 22 site. This dumping was done without authorization from the Highway 22 Co. and without its knowledge. When the company became aware of this situation in late March, it immediately wrote the three parties it believed to be involved and asked that they immediately cease such dumping and warned them that they might be required to remove the materials dumped. These letters are enclosed as attachment 3. It is possible that

Col. Neil A. Smart
April 23, 1987
Page 3

this dumping took place in a wetland but, if so, responsibility for this lies with those who did the dumping. I believe this is the "placement of fill" to which you refer in your letter of April 3, 1987 to Alter. If that is incorrect, please inform us in greater detail to what activity the April 3 letter refers.

Credit Island site: The Corps of Engineers inspected the Credit Island site in 1978 and, following the inspection, Henry C. Pfeister of the Corps wrote the Planning and Zoning Commission of Davenport on August 17, 1978 explaining that since the purpose of the disposal at Credit Island was in fact disposal and not the discharge of fill material, no permit from the Corps of Engineers under Section 404 of the Clean Water Act was required. A copy of this letter is enclosed as attachment 4. The Corps of Engineers sent a copy of that letter to the Iowa Department of Environmental Quality, the predecessor to the Department of Water, Air and Waste Management, which had authority to permit any discharge into the waters of the state.

The Iowa Department took this matter up with Alter in a letter to the company of October 27, 1978, from Rexford Walker, a copy of which is enclosed as attachment 5. It is obvious from the letter that the Iowa Department was fully aware of Alter's disposal activity at Credit Island.

In light of this letter, Alter assembled the factual history of the Credit Island site. From discussions with people familiar with the area, Alter ascertained that the Credit Island site had originally been a cornfield and when Highway 61 was built, the highway department recognized that without a culvert the elevated highway would trap drainage water on the landward side of the highway. As a result, the highway department put a culvert under the highway for drainage purposes and put in a floodgate to prevent flooding from the Mississippi River. The floodgate was to be left open in normal conditions to allow drainage from the Credit Island site and the raising and lowering of the floodgate was to be the responsibility of highway department personnel. After a time, the highway department personnel simply asked neighbors near the site to raise and lower the floodgate as they saw fit. At various times this was not done so that water collected on the landward side of Highway 61.

In November, 1978, representatives of Alter met with the Iowa Department of Environmental Quality in response to Rexford Walker's letter of October 27, 1978, and this history was explained to the Iowa officials. As a result, Mr. Walker wrote to Alter on November 30, 1978, and a copy of

Col. Neil A. Smart
April 23, 1987
Page 4

that letter is enclosed as attachment 6. The Iowa Department stated that it had been in contact with the Iowa Department of Transportation concerning the proper operation of the floodgate and that the DOT had promised to check the gate. In addition, the Department stated that it would not take any legal action against Alter on this matter and instructed the company to take steps to ensure the drainage of the site.

Of course, even if the Credit Island site were to be considered a wetland, the drainage of a wetland does not require any permit or approval from the federal government of which we are aware. Pursuant to the instructions from the Iowa Department, Alter agreed to take steps to provide constant drainage of the site (see attachment 7) and has attempted through the last nine years to meet that commitment. This has been done through plans for the development of the area which were drawn up for the company by Shive-Hattery and Associates, an engineering firm in Davenport, Iowa, which Alter hired for these purposes.

At no point in these proceedings did the Iowa Department, which had the regulatory authority to issue permits for discharges to water in Iowa, suggest that, under the circumstances, there was any requirement for Alter to apply for a discharge permit at the Credit Island site. As this record shows, Alter has attempted to comply with the instructions which it received from the appropriate regulatory authority and attempted to maintain the drainage of the Credit Island site.

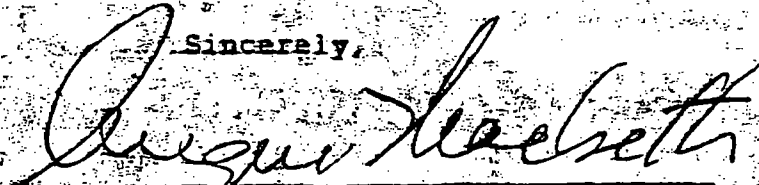
Given this history with the regulatory agencies, I am sure you can appreciate Alter's position that it has conducted itself in accordance with the instructions it received from the Iowa Department with permit-issuing authority and that in these circumstances it should not be considered to be in violation of the terms of the federal Clean Water Act. As far as we can ascertain, at no time since August, 1978 has the federal Environmental Protection Agency had authority to issue Section 402 permits under the Clean Water Act in Iowa. In these circumstances complying with the direction of the Iowa Department should surely be sufficient to demonstrate compliance with any alleged requirement to obtain a permit under Section 402 of the Clean Water Act.

I recognize that this regulatory history is complex and that it may not have been fully reflected in the files of the Corps of Engineers. I trust that this information is helpful to you in evaluating the facts and circumstances at

Col. Neil A. Smart
April 23, 1987
Page 5

the Highway 22 and Credit Island sites and will lead to the conclusion that there is no basis for claiming that Alter is in violation of the Clean Water Act. I and the people at Alter would, of course, be happy to discuss this matter with you further and I request that if you or the federal Environmental Protection Agency does not agree with Alter's views on this matter that you provide us with an opportunity to discuss the matters with you so that we may understand the views of the Corps of Engineers and/or EPA thoroughly and may respond to them as appropriate.

Sincerely,



Angus Macbeth

Attorney for Alter and
The Highway 22 Co.

AM/lsc

Enclosures

cc: Ms. Katie Biggs
Mr. Larry J. Wilson
Mr. Ralph Tuckle
Mr. Bill Cappuccio
Mr. Richard Nelson
Mr. Robert J. Koke
Donald Sitz, Esq.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

ROCK ISLAND FIELD OFFICE (ES)

1830 Second Avenue, Second Floor

Rock Island, Illinois 61201

COM: (309) 793-5800

FIS: 386-5800

September 13, 1984

Iowa Department of Water, Air, and

Waste Management

Attn: Mr. David N. Whiting

117 North Second Avenue

P.O. Box 27

Washington, Iowa 52353

Dear Mr. Whiting:

This is in response to Ms. Monica Whitt's request that the U.S. Fish and Wildlife Service inspect a waste material disposal site near Davenport, Scott County, Iowa. On September 6, 1984, representatives of this office conducted a field inspection with you and representatives of Alter Metal Company.

The site is in the west half of Section 8, Township 79 N., Range 3E. A small rocky road allows entrance to the area that is being used to dispose of waste material. The Alter representatives stated that the material is shredded scrap, nonmetal car body parts. The shredded material is mixed with dirt and compacted at the 3-acre site. Elm, cottonwood and willow trees and cattails were observed immediately adjacent to the fill with cornfields to the northwest, southwest and southeast of the site. Two drainage ditches traverse the disposal area. One bisects the site and the other borders the northeast boundary of the site. It is our understanding that Alter Metal Company has been disposing waste material at the site since 1980 and intends to use the site for up to 50 years or until a beneficial use of the material can be found.

The disposal area is non-vegetated. Adjacent to the site are palustrine, persistent emergent wetlands and palustrine forested wetlands. Many wetland-type plant species were observed around the waste material (Table 1). In addition, a few cattail plants were observed emerging from the disposed waste material. Water in the drainage ditches were highly turbid and appeared black rather than the brown color usually found in small waterways from surface erosion.

In the vicinity of the disposal site is Nahant Marsh and the Carp Lake wetland complex. These are valuable and unique wetlands of the area. The Corps of Engineers has recommended to Congress that special protection be given to Nahant Marsh. The drainage of these wetlands are connected and both areas receive flood water enrichment from the Mississippi river. The ditches of the disposal site drain into the Carp Lake wetlands.

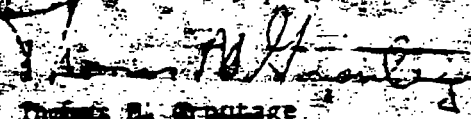
Attachment 1

The disposed waste material could have several impacts to fish and wildlife resources. Drainage and seepage from the waste material could have detrimental impacts on the adjacent palustrine forested and emergent wetlands. It appears that the majority of the waste has had minimal impacts at the disposal site proper. Aerial photos taken in 1977 and 1979 of the site indicate that the area was primarily agricultural prior to its use as a disposal site. However, some of the waste material is now encroaching on adjacent wetlands, and any further expansion could result in a loss of wetland habitat.

Any loss of wetland habitat will impact the fish and wildlife resources, water quality, and the floodplain of the area. Fish use these wetlands for food, shelter, spawning, and as nursery grounds. Many species of birds benefit by using wetlands as breeding, nesting, feeding, and overwintering grounds. Furbearers benefit in much the same way fish and waterfowl. Wetlands provide for flood and storm protection, erosion control and groundwater recharge. Wetlands purify natural waters by removing nutrients, chemical and organic pollutants, and sediments.

We request your evaluation of this disposal site in accordance with the requirements of the Clean Water Act of 1977, as amended, and appropriate state implementation regulations. Please let us know your disposition of the matter. If you have any questions, do not hesitate to contact us.

Sincerely,


Thomas E. Groatage
Field Supervisor

Enclosure: Table 1

cc: IA DHAWM (Wnuk)
U.S. EPA (Barber)
U.S. Army COE (Betker)
Alter Metal Company (Gentzkow)

Table 1: Partial list of species located at Alter Metal Company landfill, southeast of Davenport, Scott County, Iowa.

<u>Aquatic Plants</u>	<u>Species</u>	<u>Habitat</u>
Broad-leaved arrowhead	<u>Sagittaria latifolia</u>	Swamps, mud, shallow water, drainage ditches, sandy bottom of lake margins & streams
Common cattail	<u>Typha latifolia</u>	Sandy ditches, lakes, rivers & wet ground
Sedges	<u>Carex sp.</u>	Wetland marshes, swamps, & bottomland hardwoods
Horsetail	<u>Equisetum sp.</u>	Sandy soil, woods & thickets
Pennsylvania smartweed	<u>Polygonum pennsylvanicum</u>	Wet soil, high marsh
<u>Grasses & Forbs</u>		
Swamp beggar-ticks	<u>Bidens connata</u>	Swamps, moist soil
Leafy-bracted beggar-ticks	<u>Bidens racemosa</u>	Moist soil
Great Lobelia	<u>Lobelia siphilitica</u>	Swamps & wet ground
Seed canary grass	<u>Phalaris arundinacea</u>	Deep meadows
Virginia creeper	<u>Parthenocissus quinquefolia</u>	Woods & thickets
<u>Shrubs & Trees</u>		
American elm	<u>Ulmus americana</u>	Bottomland woods, along streams
Black willow	<u>Salix nigra</u>	Wet ground, frequently along rivers & streams
Cottonwood	<u>Populus sp.</u>	Bottomland woods, along streams
Silver maple	<u>Acer saccharinum</u>	Wet soil



department of water, air and waste management

October 4, 1984

W. H. Rodgers
Alter Co.
2333 Rockingham Road
Box 3708
Davenport, IA 52808

Dear Mr. Rodgers:

This letter is in regard to the car shredder waste disposal site that Alter Metal Company operates. The site is located between Highway 22, Interstate 280 and the Mississippi River. The site was first viewed in May of 1984 by personnel of this office. The most recent visit to the site was in September 1984. At that time, U. S. Fish & Wildlife personnel were present to make a determination as to whether or not the disposal operations had encroached on wetlands. The summation of their findings is stated briefly as follows: "Some of the waste material is now encroaching on adjacent wetlands, and any further expansion could result in loss of wetlands and habitat."

The state is concerned about the protection of wetland habitat and the protection of surface water and ground water quality. To that end, the state is considering this disposal operation as an open dump. The definition of an open dump is contained in Rule 900--100.2(455B), I.A.C. and is based on the exposed accumulation of solid waste. The open dump prohibition is contained in Rule 900--101.3(1), I.A.C. The regulatory authority stating the concern of solid waste disposal encroachment upon wetlands is contained in Subrule 900--101.3(2), I.A.C. Copies of all the aforementioned rules are enclosed with this letter.

The department is requiring the open dump disposal site be closed in conformance with Subrule 101.7(2), I.A.C. (copy enclosed) or the waste be covered with one foot of compacted soil once each week of operation.

In lieu of closure, or compacted soil cover each week of operation, this department would accept cover activities to occur every two weeks concurrent with a written demonstration by Alter Metal Company this disposal is causing and will cause no degradation of surface or ground water. It is felt this demonstration would require the declaration of intent to install at least two monitoring wells and collect samples from the monitoring wells and two surface water points. The samples should be analyzed for indicators of contamination e.g. specific conductance, chloride, pH, total suspended solids and COD

Regional Office #6 - 117 N. 2nd Ave., P. O. Box 27, Washington, Iowa 52353 - 319/653-2135

Henry A. Wallace Building • 900 East Grand • Des Moines, Iowa 50319 • 515/281-8600

Attachment 2

October , 1984

W. H. Rodgers
Alter Co.
Davenport, IA 52808

Page Two

It is further recommended Alter Metal Company include a statement of intent to dispose of no more solid waste to the southeast of the present disposal area. This will ensure the disposal area will not encroach upon wetlands in the future.

The installation of monitoring wells and the development of a sample collection and analysis program is highly recommended even if Alter Metal Company decides to close the site or cover each week of operation.

If you have any questions feel free to contact this office.

Sincerely,

FIELD SERVICES DIVISION

David N. Whiting

David N. Whiting
Environmental Engineer
Regional Office #6

DNW:aw

Enc.

xc: Gail Peterson, U.S. Fish & Wildlife
Central Office personnel: Pete Hamlin
Rod Vlieger
Mike Murphy
Monica Wnuk

File

H I G H W A Y 2 2 C O M P A N Y
P. O. Box 4507
Davenport, IA 52806
(319) 383-0564

CERTIFIED RETURN RECEIPT REQUESTED

March 24, 1987

Bozarth & Bell Inc.
6002 Telegraph Road
Davenport, IA 52804

Gentlemen:

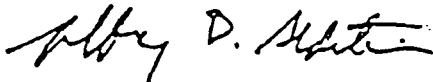
It has come to our attention today that it is possible that you have been dumping waste material on a property we own off of Highway 22, abutting the property of Scotty's Auction Service, 5403 Rockingham Road in Davenport, Iowa.

While it is possible authority for dumping was granted by Scotty McFedries for his property, we have not, nor do we intend to grant authority for dumping on our property.

If you have been dumping at the McFedries property, we ask that you cease and desist immediately, allowing us one week to establish our boundaries and erect our signs.

Please be aware that it is possible if dumping has occurred on our property, either we or public authorities will require you to remove the materials dumped there at your expense.

Sincerely,



Jeffrey D. Goldstein
President

cc: Mr. Scotty McFedries
Scotty's Auction Service

Mr. Don Sitz
Lane & Waterman

H I G H W A Y 2 2 C O M P A N Y

P. O. Box 4507

Davenport, IA 52808

(319) 383-0564

CERTIFIED RETURN RECEIPT REQUESTED

March 24, 1987

Malik's Super Sweep
1119 N. Thornwood Avenue
Davenport, IA 52804

Gentlemen:

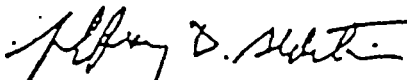
It has come to our attention today that it is possible that you have been dumping waste material on a property we own off of Highway 22, abutting the property of Scotty's Auction Service, 5403 Rockingham Road in Davenport, Iowa.

While it is possible authority for dumping was granted by Scotty McFedries for his property, we have not; nor do we intend to grant authority for dumping on our property.

If you have been dumping at the McFedries property, we ask that you cease and desist immediately, allowing us one week to establish our boundries and erect our signs.

Please be aware that it is possible if dumping has occurred on our property, either we or public authorities will require you to remove the materials dumped there at your expense.

Sincerely,



Jeffrey D. Goldstein
President

cc: Mr. Scotty McFedries
Scotty's Auction Service

Mr. Don Sitz
Lane & Waterman

Neil Johnson 65-367
H I G H W A Y 2 2 C O M P A N Y
P. O. Box 4507
Davenport, IA 52808
(319) 383-0564

CERTIFIED RETURN RECEIPT REQUESTED

March 24, 1987

Flynn R. Griffin Trucking Co.
3804 N. Thornwood Avenue
Davenport, IA 52806

Gentlemen:

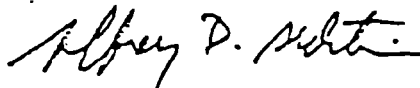
It has come to our attention today that it is possible that you have been dumping waste material on a property we own off of Highway 22, abutting the property of Scotty's Auction Service, 5403 Rockingham Road in Davenport, Iowa.

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If you have been dumping at the McFedries property, we ask that you cease and desist immediately, allowing us one week to establish our boundries and erect our signs.

Please be aware that it is possible if dumping has occurred on our property, either we or public authorities will require you to remove the materials dumped there at your expense.

Sincerely,



Jeffrey D. Goldstein
President

cc: Mr. Scotty McFedries
Scotty's Auction Service

Mr. Don Sitz
Lane & Waterman



DEPARTMENT OF THE ARMY
ROCK ISLAND DISTRICT CORPS OF ENGINEERS
CLOCK TOWER BUILDING
ROCK ISLAND, ILLINOIS 61201

IN REPLY REFER TO

ENCLOSURE

17 AUG 1978

Mr. James Packard
Planning and Zoning Commission
City Hall
Davenport, Iowa 52601

Dear Mr. Packard:

Pursuant to your telephone request, personnel of this office accompanied Mr. Lee Marshberger to inspect a fill activity that is taking place in a wetland within the City of Davenport, Iowa adjacent to US-61 and in the vicinity of Credit Island.

Although the area is a wetland and would seem to be subject to Department of the Army Section 404 permit jurisdiction which regulates the discharge of dredged or fill material, the material does not meet the definition of fill material. The definition of fill material found in our administrative regulation, 33 C.F.R. 323.2(m) is, "Any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under Section 402 of the Federal Water Pollution Control Act Amendments of 1972". Since the primary purpose (because of the nature of the material) appears to be the disposal of waste material, we are referring the matter, by copy of this letter, to Region VII of the U.S. Environmental Protection Agency for their appropriate action concerning this activity.

If you should have any additional information concerning this matter, please contact our Regulatory Functions Branch by letter, or telephone Mr. Tom Freitas, 309/768-6361, extension 215.

Sincerely yours,

Robert J. Friedman, P.E.
Chief, Operations Division

Attachment 4

HCROD-S

Mr. James Packard

17 AUG 1978

Copies furnished:

Mr. Carl Walters

U. S. Environmental Protection Agency

Region VII

1735 Baltimore, Room 249

Kansas City, Missouri 64108

Iowa Department of Environmental Quality

Wallace State Office Building

East 9th Street and Grand Avenue

Des Moines, Iowa 50319

City Attorney's Office

City Hall

226 West Fourth

Davenport, Iowa 52801

Mr. Bernard Goldstein, President

Alter Company

2333 Rockingham Road

Davenport, Iowa 52808

DISPOSITION FORM

For use of this form, see AR 340-15; the proponent agency is The Adjutant General's Office.

AGENCY OR OFFICE SYMBOL

NCROD-S

SUBJECT

Permits Branch--Inspection of Unauthorized Activities
Invest. File No 0227 /Inspec. No. 1

TO District File

FROM Thomas Freitag
William Lehmann

DATE 26 July 1978

CMT 1

TIME ARR./TIME DEPART:

1000 / 1032

RIVER MILE:

480.8

RIVER STAGE:

N/A

ORDINARY HIGH WATER:

N/A

WEATHER:

Partly Cloudy 81°F

1. REASON FOR INSPECTION:

() PRE-CONSTRUCTION INSPECTION

(X) REPORTED VIOLATION (COMPLETE ITEMS 2 AND 20)

() SUSPECTED VIOLATION

() FOLLOWUP INSPECTION

2. COMPLAINANT INFORMATION, IF APPLICABLE (NAME, ADDRESS, TEL. NO., METHOD OF CONTACT)

Jim Packard

Planning and Zoning Commission

City Hall

Davenport, IA

Tel: 326-7745

3. RESPONSIBLE PARTY(IES): (NAME, ADDRESS, TEL. NO.)

Alter Company

2333 Rockingham Road

Davenport, IA

Tel: 326-2561

4. ADJACENT LANDOWNERS: (NAME, ADDRESS, TEL. NO.)

5. LOCATION OF ACTIVITY: (RIVER, BANK, NEAREST TOWN)

Mississippi River, RB, in the City of
Davenport, near Credit Island, North side
of US-61

6. TYPE AND PURPOSE OF THE ACTIVITY:

Disposal of material in wetland.

7. TYPE OF VIOLATION:

() SECTION 10

() SECTION 14

(X) SECTION 101

() SECTION 10 AND 101

() LEVEE ENCROACHMENT

() OTHER

8. WAS THERE ANY ACTIVITY AT TIME OF INSPECTION?
(IF YES, EXPLAIN IN REMARKS)

(X) YES () NO

9. WAS THE WORK DONE CONSTANT?

(IF NO, EXPLAIN IN REMARKS--WEEKENDS, ETC.)

Unknown

() YES () NO

10. WHO IS PERFORMING THE WORK? (NAME, ADDRESS, TEL. NO. OF INDIVIDUAL OR CONTRACTOR)

According to the complainant, Alter Company (see item 3) is providing material from their automobile shredder. A truck belonging to W.G. Block Co. (317 E. 4th, Dav.) was seen at the site.

11. IS THE ACTIVITY CREATING ANY HAZARD TO NAVIGATION OR CAUSING ANY POLLUTION?
(IF YES, EXPLAIN IN REMARKS)

(X) YES () NO

12. WHAT TYPE OF EQUIPMENT IS AT THE SITE?

Dump trucks

13. WHAT PERCENT COMPLETE IS THE WORK? (DESCRIBE WORK COMPLETED)

Unknown - a mixture of foam rubber, wood, dirt, brick, etc. has been placed in a wetland adjacent to Mississippi River. The fill is approximately 500 feet long and 200 feet wide.

14. WHEN DID WORK COMMENCE AND IS ANY ADDITIONAL WORK OR ACTIVITY PROPOSED?
(IF YES, EXPLAIN IN REMARKS)

Unknown

() YES () NO

15. IS ANY GOVERNMENT-OWNED LAND INVOLVED OR AFFECTED?
(IF YES, INDICATE ON SKETCH)

() YES (X) NO

16. IS THE WORK IN OR NEAR A FLOOD PLAIN OR WETLAND AREA?
(IF YES, INDICATE ON SKETCH)

(X) YES () NO

17. WHAT TYPE LAND CLASSIFICATION IS THE AREA? (UNDEVELOPED, AGRICULTURAL, INDUSTRIAL)

Undeveloped

18. DOES THE WORK AFFECT A DRAINAGE

OR LEVEE DISTRICT? (IF YES, LIST)

() YES (X) NO

19. HAVE ANY OTHER AGENCIES GIVEN APPROVAL OR BEEN APPLIED TO? (IF YES, LIST)

() YES (X) NO

20. REMARKS: (INCLUDE CONVERSATIONS WITH OTHER PERSONS, EXPLANATIONS OF OTHER ITEMS)

Mr. Lee Harshberger (address same as in item 2) indicated that Alter Company had been informed by letter by his office that the type of fill used was not allowed because of City Ordinance. The company had replied that it was their attorney's opinion that the material was acceptable.

8. Material was being dumped at the time of the inspection.

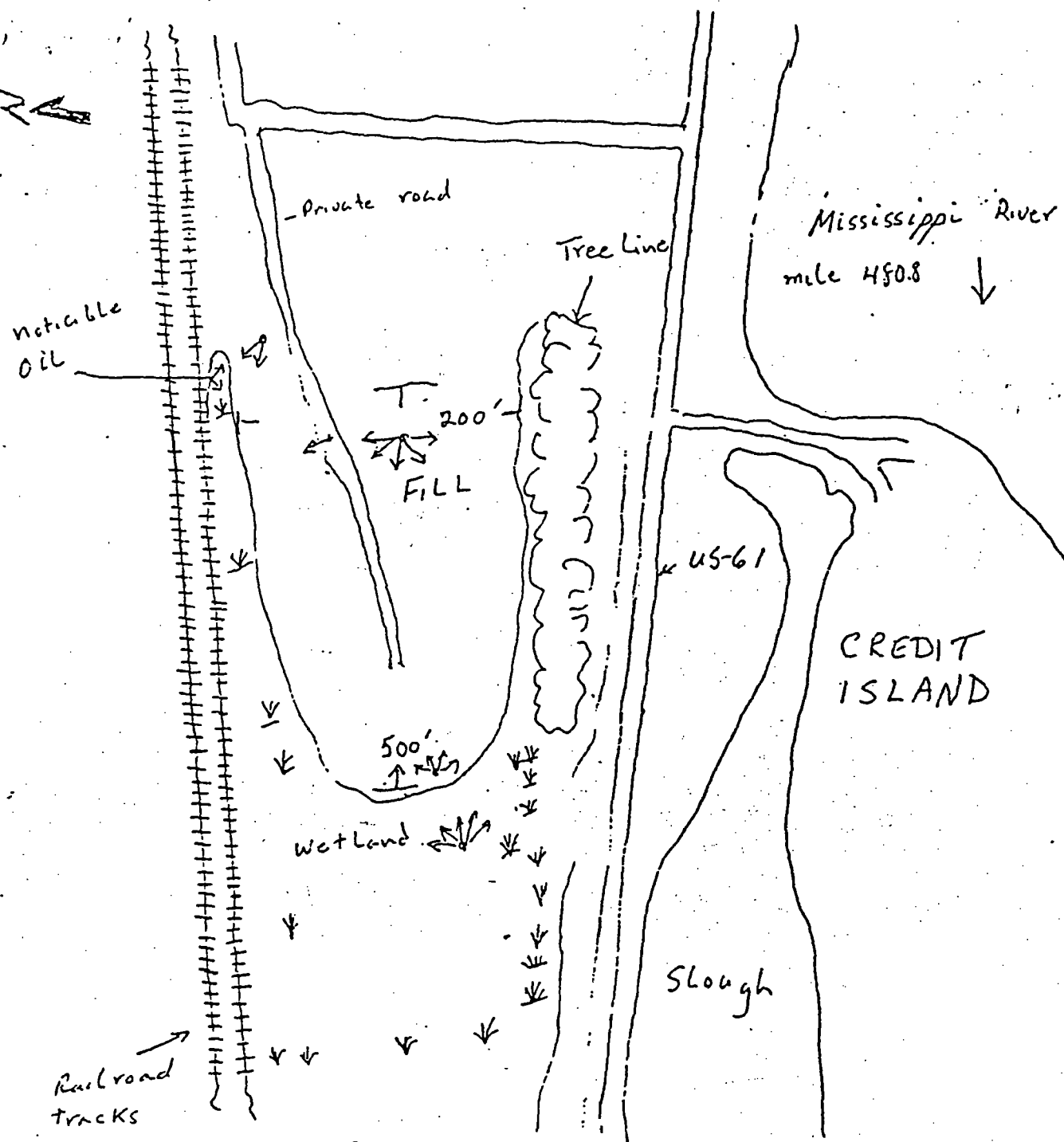
11. There was evidence of spilled oil at upper end of fill near railroad tracks. Oil was on the bank and in the water.

16. See attached Environmental Inventory Report.

21. SKETCHES: (SKETCHES SHOULD INCLUDE NORTH ARROW, DIRECTION OF FLOW OF WATERWAY, PRESENT WATER LEVEL, ORDINARY HIGH WATER LINE, DIMENSIONS, AND PHOTOGRAPH REFERENCE POINTS)

IF MORE SPACE IS NEEDED, USE AND ATTACH ADDITIONAL SHEETS AS REQUIRED.

16. PHOTOGRAPHS—SKETCHES: (SKETCHES SHOULD INCLUDE NORTH ARROW, DIRECTION OF FLOW OF THE WATERWAY, PRESENT WATER LEVEL, ORDINARY HIGH WATER LINE, AND PHOTOGRAPH REFERENCE POINTS)



IF MORE SPACE IS NEEDED, USE AND ATTACH ADDITIONAL SHEETS AS REQUIRED.

SIGNATURE AND DATE:

Thomas M. Freiler
William D. Schman

TITLE:

Biologist
Civil Engineering Technician



iowa department of environmental quality

reply to: Leslie Ann Carpenter
phone: 515/281-8934

CERTIFIED MAIL

October 27, 1978

Mr. Charles Smith
Senior Vice President, Marketing
Alter Company
2333 Rockingham Rd.
Davenport, IA 52808

Dear Mr. Smith:

On September 21, 1978, a staff member of this Department observed evidence of open dumping of car shredder waste on property under your control located near Credit Island, north of U.S. Highway 61, Scott County, Iowa.

This open dump is a violation of Chapter 455B.82 of the Code of Iowa and Subrule 400--26.2 and 26.6 of the Iowa Administrative Code. All open dumping is prohibited except for rubble; rubble being defined as stone, brick, or similar inorganic material.

The law does provide an exemption for disposal of solid waste on land owned or leased by the solid waste generator if the following conditions are met: 1) the waste must be generated on the property of the person desiring to dispose of the waste; 2) the waste must result from the activity of that person on that property; and 3) the waste must be disposed on the property of that person. However, disposal of waste under the exemption may not be by open dumping or in a way that creates a public health hazard, nuisance or degradation of surface water or aquifers that are in actual or deemed to be of potential use as a water resource.

Since the Alter Company waste is being used to fill in a wetlands area and the inspector observed the bulldozing of waste into water, Alter's activity at this site is not considered to be exempt.

Therefore, dumping of non-rubble material must cease and the site closed and covered in accordance with Subrule 400--26.6. It is suggested that Alter contact the Soil Conservation Service for their recommendations on how to accomplish stabilization of the site. Since this site is located in the flood plain, Natural Resources Council (NRC) approval must be secured before beginning closing operations. A copy of this letter is being sent to NRC for their information.

You are requested to advise this office in writing within ten (10) working days of receipt of this letter of your plans for bringing this site into compliance with thirty (30) days. And, further, to notify this office when work on the site is

Attachment 5

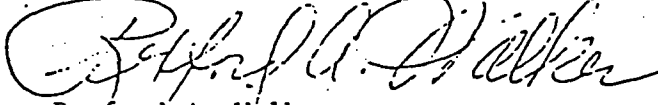
Mr. Charles Smith
Page Two
October 27, 1978

complete. It is the intent of this letter to secure your voluntary compliance in properly closing and covering this dump. However, failure to respond will be interpreted as intent not to take corrective action to comply with the Iowa Administrative Code.

A copy of the open dumping regulations is enclosed for your convenience. If you have any questions concerning this matter, please do not hesitate to contact this office.

Sincerely,

AIR AND LAND QUALITY DIVISION



Rexford A. Walker
Chief of Surveillance

RAW:LAC:klg

cc: DEQ Regional Office No. 6
William Anderson, Compliance Officer, DEQ
Bob Watson, NRC

Enclosure

CHAPTER 26
GENERAL REQUIREMENTS RELATING TO SOLID WASTE DISPOSAL

400—26.1(455B) *Compliance.* All solid waste shall be stored, collected, transported, utilized, processed, reclaimed or disposed of in a manner consistent with requirements of these rules.

400—26.2(455B) *General conditions of solid waste disposal.* Any solid waste which may be disposed at a site other than a sanitary disposal project pursuant to chapter 455B of the Code shall be disposed as provided in this rule.

26.2(1) Open dumping is prohibited except for rubble.

26.2(2) A public or private agency dumping or depositing solid waste shall do so in a manner that creates no public health hazard, nuisance or degradation of surface water or aquifers that are in actual or deemed to be of potential use as a water resource.

400—26.3(455B) *Storage, collection and transportation of solid waste.*

26.3(1) *Public agency responsibility.* Every city within its jurisdiction, and county in its unincorporated areas shall be responsible for the storage, collection and transportation of solid waste. Any powers, privileges or authority exercised in fulfilling this responsibility may be exercised and enjoyed jointly with any other public agency. The responsible public agency shall:

a. Provide either through a public or private agency, for an adequate, efficient, and sanitary system for the collection and transportation of all solid wastes originating from households, service premises, business establishments and industries within their jurisdiction which are not exempted by law.

b. Issue and enforce regulations, subject to review by the department, pertaining to the storage, collection and transportation of all solid waste within their jurisdiction. Such regulations shall be no less restrictive than those in subrule 26.3(2), and shall, as a minimum, include specifications for:

- (1) Storage containers.
- (2) Storage duration.
- (3) Storage locations.
- (4) Collection frequency.
- (5) Vehicle design and operation.

26.3(2) *Container and vehicle standards.*

a. Vehicles or containers used for the collection and transportation of any solid waste shall be loaded and moved in such a manner that the contents will not fall, leak or spill therefrom, and shall be covered to prevent blowing or loss of material. Where spillage does occur, the material shall be picked up immediately by the collector or transporter and returned to the vehicle or container and the area properly cleaned.

b. Vehicles or containers used for the collection and transportation of garbage and similar putrescible wastes or refuse containing such materials shall be leakproof, durable and of easily cleanable construction. They shall be cleaned to prevent nuisances, pollution or insect breeding and shall be maintained in good repair.

c. Vehicles and containers used for the collection and transportation of toxic and hazardous wastes shall be so constructed that they can be loaded, moved and unloaded in a manner that does not create a danger to public health or safety and in compliance with the rules and federal and state laws and local ordinances and regulations.

400—26.4(455B) *Details of management plan proposals.* Cities, counties and private agencies which are planning to establish or operate a sanitary disposal project other than a sanitary landfill, to modify their solid waste management practices, or to revise their existing management plan, shall file with the executive director a plan or revision of an existing plan before implementing it.

26.4(1) Such a plan or revision shall include the following information:

- a. Public and private agencies involved.
- b. Population densities and projections.
- c. Major waste contributors.
- d. Existing collection and disposal practices in the service area.
- e. Anticipated future industrial and commercial developments and their effects.
- f. Status of the solid waste management plan of the service area and evidence that the facility or changes contemplated are compatible with it.
- g. An evaluation of alternatives for the disposal or processing of solid waste.
- h. Evaluation of energy needs, markets and goals in any resource recovery to be provided.
- i. A description of the level of service expected.
- j. A broad assessment of the costs and benefits of the methods or processes to be used including capital cost, projected net annual operating cost, and cost of land disposal of any waste which cannot be handled or is removed from the process.
- k. A description of the methods of financing to be used.

400—26.5(455B) Contracts with permitted agencies.

26.5(1) Every city, county, and other public agency which complies with the requirements of chapter 455B of the Code for the disposal of solid waste by means of a contract with an agency holding a sanitary disposal project permit or by means of a contract with a hauler who has a contract with an agency holding a sanitary disposal project permit shall submit to the department a photostatic copy of that executed contract. All such agencies shall have on file at the department at all times a valid contract. When the term of the contract expires, a renewal of the contract or a new contract shall be submitted.

26.5(2) All public agencies which contract with a hauler to comply with the requirements of part 1 of division iv of chapter 455B shall include as terms of that contract that all solid waste collected by the hauler for that agency shall be hauled in vehicles which comply with the standards of subrule 26.3(2) and disposed at a sanitary disposal project permitted by the department.

400—26.6(455B) Closing of open dumps. Every public agency shall properly close or enforce the proper closing of all open dumps which are within the agency's jurisdiction. Every private agency shall properly close all open dumps under their control.

26.6(1) All open dumps shall be closed by July 1, 1975.

26.6(2) Proper closing shall include the following:

- a. The dump shall be fenced to control access as necessary to prevent further open dumping. Any gates shall be kept locked.
- b. A permanent sign shall be posted at the dump entrance indicating that it is closed, specifying the penalty for unauthorized dumping, identifying the location of a permitted site and providing other pertinent information.
- c. Effective means shall be taken to eliminate flies and other insects, rodents, or vermin.
- d. All fires shall be totally extinguished.
- e. Extruding refuse shall be removed and the surface shall be permanently covered with earth.
- f. Each dump shall be graded to promote runoff without erosion. Diversion drainage shall be provided as necessary to prevent surface water from entering the filled area.
- g. The finished surface of the filled area shall be seeded with grasses or other suitable vegetation immediately upon completion or promptly in the spring on areas terminated during winter conditions.
- h. The restored area shall be periodically cleaned up as needed to prevent it from reverting to an open dump.
- i. Other corrective actions shall be taken as required by the executive director.



Iowa Department of Environmental Quality

reply to: Leslie Carpenter
phone: 515/281-8910

November 30, 1973

Mr. Donald H. Sitz
Lane and Waterman
700 Davenport Bank Building
Davenport, IA 52801

Dear Mr. Sitz:

Thank you for meeting with us on November 22, to discuss the Alter Company waste disposal site. A summary of our discussion is enclosed for your information.

As stated at our meeting, the Department will not pursue formal legal action concerning this matter. However, you are reminded that any future dumping of waste into water would be considered to be a violation of Department open dumping rules. Alter Company is requested to make a commitment, in writing, that they will take steps to ensure constant drainage of the site so that waste is not dumped into water.

Also, this Department's action does not preclude action by other agencies. A copy of this letter and memo will be sent to all other agencies which may have jurisdiction over a wetlands.

We have been in contact with the Department of Transportation (DOT) concerning the proper operation of the floodgate and DOT has promised to check the gate. Any problems with the gate should be addressed to the DOT District 6 Engineer, 430 16th Avenue, S.W., Cedar Rapids, 319/364-0235.

Should you desire to establish a permitted sanitary waste disposal project, permit application information can be obtained by contacting Mr. Gary Schultz of the Air and Land Quality Division, 515/281-8916.

Sincerely,

AIR AND LAND QUALITY DIVISION

Rexford A. Walker, Chief
Surveillance Section

RAW:LAC:ch
Enclosure

cc: William Anderson, Compliance Officer, DEQ - Des Moines, IA
DEQ Regional Office No. 6 - Washington, IA
Robert S. Goldstein, Alter Company - Davenport, IA
Harold Daniel, Alter Company - Davenport, IA
Charles Smith, Alter Company - Davenport, IA
Robert Watson, NRC - Des Moines, IA
James Packard, Planning and Zoning Commission - Davenport, IA
Henry G. Pfeister, Rock Island District, Corp of Engineers - Rock Island, IA
Glen Yeager, EPA - Kansas City, MO

Attachment 6

Henry A. Wallace Building, Des Moines, Iowa 50319

JOE P. LANE 1908-1971
CHARLES M. WATERMAN 1908-1984
LARNED A. WATERMAN
CHARLES D. WATERMAN, JR.
ONALD R. SITE
BERT V. F. WATERMAN
JBERT A. VAN VOOREN
THOMAS N. RAMP
JAMES E. KELLEY
CHARLES W. BROORE
WILLIAM C. CAVIDSON
CHARLES D. WATERMAN, JR.
CHARLES E. MILLER
THOMAS J. SHIELDS
DAVID A. GETTMANN
DANA M. CRAIG
TERRY M. GIEBELSTEIN
RANC S. MONIO
LINCA R. RIEHL

ANE & WATERMAN

700 DAVENPORT BANK BUILDING

DAVENPORT, IOWA 52801

TELEPHONE
(319) 324-3246

January 4, 1979

OF COUNSEL
ALFRED MAGNUSSON
OTTO C. BAUCH

Iowa Department of Environmental Quality
Henry A. Wallace Building
Des Moines, IA 50319

Attention: Ms. Leslie Carpenter

Re: Alter Company

Gentlemen:

We apologize for not having responded earlier to your letter of November 30, 1978, with which you enclosed a summary of our discussion of November 22, concerning the Alter Company waste disposal site.

In your letter you requested a commitment from Alter Company indicating that it will take steps to insure constant drainage of the site so that waste is not dumped into water.

Alter Company does so commit itself. However, the Company intends to inform you in greater detail the steps which will be undertaken. The Company has employed Shive-Hattery and Associates of Davenport, Iowa, who are engineers specializing, among other things, in sanitary and water disposal matters. Alter Company has asked Shive-Hattery for recommendations for the most appropriate method of providing assurance of the constant drainage which you require.

A report is expected from the engineers in the near future and we will contact you further when it has been received.

ANE & WATERMAN

Iowa Department of Environmental Quality
January 4, 1979
Page -2-

We appreciated the opportunity to appear before you and to explain the situation, and we are gratified by your decision not to pursue legal action. The summary of the meeting prepared by Ms. Carpenter appears to us to be accurate.

Sincerely yours,

D. H. Sitz

DHS:gp

cc: ✓ Mr. Harold Daniel
Alter Company